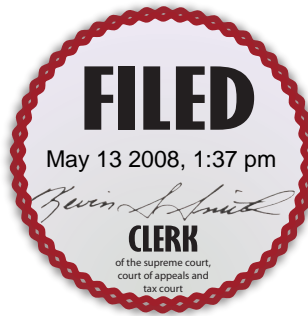


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

T.B.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0711-JV-953
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Beth Jansen, Magistrate
Cause No. 49D09-0706-JD-002026

MAY 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

T.B. appeals the juvenile court's dispositional order adjudicating him to be a delinquent child for committing resisting law enforcement, a class A misdemeanor if committed by an adult, and consumption of alcohol, a class C misdemeanor if committed by an adult. We affirm in part and reverse in part.

Whether there is sufficient evidence to support the juvenile court's dispositional order.

On June 15, 2007, Officer Frank Vanek was dispatched to the eastside of Indianapolis to investigate a fight involving the use of baseball bats. As Officer Vanek pulled up to the scene, the crowd scattered. Seventeen-year-old T.B., however, remained in the street where he was yelling and screaming. When Officer Vanek approached T.B. and asked him what was going on, T.B. balled up his fist and told the officer not to "f-----g" talk to him. Tr. at 9. Officer Vanek smelled a strong odor of alcohol emanating from T.B.'s breath and person.

Officer Vanek feared for his safety and decided to handcuff T.B. After the officer got T.B.'s right wrist into a handcuff, T.B. decided that he didn't want to be handcuffed and pulled away. T.B. then placed his left hand on the officer's shoulder as if he wanted to wrestle. When Officer Vanek told T.B. that he was under arrest and to place his hands behind his back, T.B. refused to comply. The officer brought his right knee up into T.B.'s midsection, and T.B. spun around and tried to get his arm away from the officer by jumping on the hood of the officer's car. Officer Vanek quickly spun around and got behind T.B.

T.B. was subsequently adjudicated to be a delinquent child for committing resisting law enforcement, a class A misdemeanor if committed by an adult, and illegal consumption, a class C misdemeanor if committed by an adult. T.B. appeals the adjudication.

T.B.'s sole issue is whether there is sufficient evidence to support the juvenile court's adjudication. When the State seeks to have a juvenile adjudicated to be a delinquent for committing an act that would be a crime if committed by an adult, the State must prove every element of the crime beyond a reasonable doubt. *J.S. v. State*, 843 N.E.2d 1013, 1016 (Ind. Ct. App. 2006), *trans. denied*.

Upon review of a juvenile adjudication, this court will consider only the evidence and reasonable inferences supporting the judgment. *Id.* We will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* If there is substantial evidence of probative value from which a reasonable trier of fact could conclude that the defendant was guilty beyond a reasonable doubt, we will affirm the adjudication. *Id.*

Resisting Law Enforcement

T.B. first argues there is insufficient evidence to support the resisting law enforcement adjudication because he “did not use strong, powerful, violent means to evade . . . Officer Frank Vanek’s rightful exercise of his duties.” Appellant’s Br. at 4. Indiana Code 35-44-3-3 provides in pertinent part that a person commits the offense of resisting law enforcement if he knowingly or intentionally forcibly resists, obstructs or interferes with a law enforcement officer who is engaged in the execution of his duties. This court has previously interpreted Indiana Code section 35-44-2-2 as not requiring the

application of an overly strict definition of “forcibly resist.” *See Johnson v. State*, 833 N.E.2d 516, 519 (Ind. Ct. App. 2005) (affirming a conviction for resisting law enforcement where defendant turned and pushed away from arresting officers and “stiffened up” when they attempted to place him into a transport vehicle).

Further, in *J.S.*, 843 N.E.2d at 1013, we held that evidence that J.S. flailed her arms, pulled, jerked, and yanked away from the officer was sufficient to support her adjudication based upon the crime of resisting law enforcement. Here, as in *J.S.*, the evidence reveals that T.B. pulled away, placed his hand on the officer’s shoulder as if he wanted to wrestle him, and spun around and jumped on the hood of the officer’s car to get his arm away from the officer so that the officer could not put T.B.’s wrist into the handcuffs. This evidence supports T.B.’s adjudication based upon the crime of resisting law enforcement.

Illegal Consumption of Alcohol

It is a Class C misdemeanor for a minor to knowingly possess or consume an alcoholic beverage. Ind. Code § 7.1-5-7-7. For the purposes of Title 7.1, an alcoholic beverage is a liquid or solid that is or contains one-half percent or more alcohol by volume.

T.B. argues there is insufficient evidence to support the illegal consumption adjudication because there is no evidence that he consumed a beverage containing at least .5% alcohol by volume. The State concedes that T.B. is correct. *See Turner v. State*, 749 N.E.2d 1205 (Ind. Ct. App. 2001). We therefore reverse T.B.’s adjudication based upon the crime of illegal consumption of alcohol.

Affirmed in part and reversed in part.

BAILEY, J., and BRADFORD, J., concur.